



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

*Street address:* 629 East Main Street, Richmond, Virginia 23219

*Mailing address:* P.O. Box 10009, Richmond, Virginia 23240

Fax (804) 698-4500 TDD (804) 698-4021

[www.deq.state.va.us](http://www.deq.state.va.us)

Robert G. Burnley  
Director

(804) 698-4000

1-800-592-5482

March 29, 2002

County of Brunswick  
c/o Mr. Gerald Vincent,  
County Administrator  
P. O. Box 399  
Lawrenceville, Virginia 23868

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

RE: VWP Individual Permit Number 01-1193  
Brunswick County, Virginia, Final VWP Individual Permit

Dear Mr. Vincent:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit. The permit authorizes the construction of an intake on the Meherrin River, the construction of a water storage reservoir in the headwaters of Greenville Creek, the construction of stream and wetland crossings for water transmission lines along the existing right of way between the Kinder Morgan Brunswick Generating station and Route 58, the construction of stream and wetland crossings for water transmission lines along Route 58 between Pleasant Shade and Edgerton, the construction of stream and wetland crossings for a gas transmission line between the Plantation Gas transmission line and the Kinder Morgan Brunswick Generating station, and wetland impacts associated with the footprint of the Kinder Morgan Brunswick Generating Station. This permit authorizes no more than 4.354 acres of permanent impacts to wetlands associated with the reservoir and with the Brunswick Generating Station, no more than 0.072 acres of temporary conversion impacts to wetlands associated with the gas transmission line, no more than 0.949 acres of temporary wetland impacts associated with the utility line easement within existing right of way and no more than 0.18 acres of temporary wetland impacts associated with the public water supply line along Highway 58. The permit authorizes a maximum daily withdrawal of 8.2 million gallons and a maximum annual withdrawal of 1.825 billion gallons from the Meherrin River.

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The provisions and conditions contained therein according to § 401(a)(1) of the Clean Water Act requires that:

“Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge in the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act.”

This permit is valid for 15 years from the date of issuance. Re-issuance of the permit may be necessary if any portion of the authorized activities or any permit requirement (including compensatory mitigation provisions) have not been completed.

Late in the permit process it came to our attention that the County was also pursuing the option of obtaining water from Lake Gaston and it appears that the Corps of Engineers is also favoring that option. Please note that general condition H states that "Cause for reopening a permit includes, but is not limited to when the circumstances on which the permit was based have materially and substantially changed since the time the permit was issued and thereby constitute cause for permit modification". Also the Virginia Water Protection Permit regulation lists as a specific cause for modification: "When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations". Should the County obtain the requisite approvals to take water from Lake Gaston, the Board may consider reopening this permit for the above reasons and adjusting the minimum instream flow condition accordingly.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 calendar days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

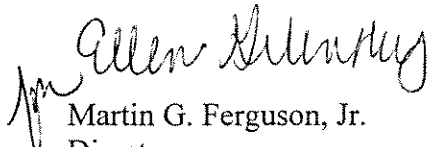
Alternatively, any owner under §§62.1-44.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said

Mr. Gerald Vincent  
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petition must meet the requirements set forth in §1.23(b) of the board's Procedural Rule Number 1 (9 VAC 25-230-10 et seq. of the Virginia Administrative Code). In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is mailed to such owner by certified mail.

If you have any questions, please contact Joseph P. Hassell at 804-698-4072.

Sincerely,

  
Martin G. Ferguson, Jr.  
Director  
Office of Water Permits

Enclosures: Permit Cover Page, Part I – Special Conditions, Part II – General Conditions

cc: Ed Graham, U.S. Army Corps of Engineers  
Ben Stagg, Virginia Marine Resources Commission  
Mac Bugg, B & B Consulting  
Melanie Davenport, Troutman, Sanders, Mays and Valentine  
VWP permit file



# COMMONWEALTH of VIRGINIA

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(804) 698-4000  
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VWP Permit No. 01-1193

Effective Date: March 29, 2002

Expiration Date: March 29, 2017

### VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with Section 401 of the Clean Water Act as amended (33 USC 1251 et seq) and the State Water Control Law and regulations adopted pursuant thereto, the Board has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The Board finds that the effect of the impact together with other existing or propose impacts, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Permittee: County of Brunswick

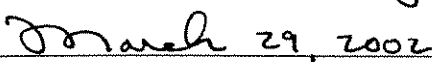
Address: Post Office Box 399, Lawrenceville, Virginia 23868

Activity Location: A water supply intake on the Meherrin River approximately one-half mile west of the Brunswick County-Greenville County line; an impoundment on the headwaters of Greenville Creek approximately 1350 feet from the Brunswick County-Greenville County line; and stream crossings associated with raw water transmission lines connecting the intake on the River to the impoundment, and stream crossings associated with treated water transmission lines connecting the treatment plant at the impoundment to the Route 58 corridor and to the Kinder Morgan Power Plant north of Route 603 in Brunswick County.

Activity Description: The construction and operation of a water supply intake and raw water transmission pipeline for industrial and municipal water supply.

The authorized discharge shall be in accordance with this cover page, Part I - Special Conditions, Part II - General Conditions.

  
for Director, Department of Environmental Quality

  
Date

**A. Authorized Activities**

1. This permit authorizes the construction of an intake on the Meherrin River, the construction of a water storage reservoir in the headwaters of Greenville Creek, the construction of stream and wetland crossings for water transmission lines along the existing right of way between the Kinder Morgan Brunswick Generating station and Route 58, the construction of stream and wetland crossings for water transmission lines along Route 58 between Pleasant Shade and Edgerton, the construction of stream and wetland crossings for a gas transmission line between the Plantation Gas transmission line and the Kinder Morgan Brunswick Generating station, and wetland impacts associated with the footprint of the Kinder Morgan Brunswick Generating Station. This permit authorizes no more than 4.354 acres of permanent impacts to wetlands associated with the reservoir and with the Brunswick Generating Station, no more than 0.072 acres of temporary conversion impacts to wetlands associated with the gas transmission line, no more than 0.949 acres of temporary wetland impacts associated with the utility line easement within existing right of way and no more than 0.18 acres of temporary wetland impacts associated with the public water supply line along Highway 58 as specified in the Joint Permit Application dated June 29, 2001 and supplemental materials received on November 16, 2001 and January 22, 2002.
2. The project activities, including any conditions and limitations, described in the Joint Permit Application and any supplemental materials submitted by the applicant, or authorized agent, shall be adhered to for the term of this permit.
3. Brunswick County shall notify the Department of Environmental Quality Office of Water Permits of any additional impacts to State waters, including wetlands, associated with this project. Any additional impacts to State waters, including wetlands, shall be subject to individual permit review or modification of this permit, and compensatory mitigation will be required.
4. This permit is valid for 15 years from the date of issuance.
5. This permit does not satisfy the need to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit for outfall structures.

**B. Standard Project Conditions:**

1. The activities authorized by this permit shall be executed in a manner to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code.
2. Brunswick County shall employ measures to prevent spills of fuels, lubricants, or other pollutants into State waters.

3. All dredging and/or filling in State waters shall be accomplished in a manner that minimizes stream bottom disturbances and turbidity increases.
4. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows. Flows downstream of the project area shall be maintained to protect all uses.
5. All construction, construction access (for example, cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this permit.
6. Immediately downstream of the project area, water quality standards shall not be violated as a result of the construction activities.
7. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.
8. Any exposed slopes or streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
9. No machinery may enter flowing waters, unless authorized by this permit.
10. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
11. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.
12. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practical. Mats shall be removed as soon as the work is complete.
13. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland

areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub-shrub, or forested). Brunswick County shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to pre-existing contours.

14. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into State waters, managed such that leachate does not enter State waters, and entirely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.
15. In issuing this permit, the Board has not taken into consideration the structural stability of any proposed structure(s).

**C. Streamflow and Water Withdrawal Monitoring**

1. Brunswick County shall monitor the Meherrin River near Lawrenceville gage, USGS # 2051500 on a daily basis when withdrawals are occurring and use this provisional data to project streamflow conditions to the intake site. The gage shall be read no less than once every 24 hours. When withdrawals are continuous the gage shall be read at approximately the same time(s) every day.
2. Brunswick County shall monitor water withdrawals on a daily basis and shall install, use and maintain a totalizing flow meter or similar device or employ a methodology that will enable the County to accurately determine and report daily water withdrawals.
3. On each day that water is withdrawn, Brunswick County shall monitor and record the provisional daily average streamflow of the Meherrin River gage near Lawrenceville, compute the seven day rolling average of streamflow of the Meherrin River near Lawrenceville, calculate the projected daily average streamflow of the Meherrin River at the intake site, record the volume of water withdrawn and note the maximum allowable water withdrawal under the terms of this permit conditions as set out in Section F. Brunswick County shall file an annual monitoring report by January 31<sup>st</sup> of each year to demonstrate compliance with the water withdrawal special conditions of this permit that includes all of the above items.
4. Within 90 days of permit issuance, Brunswick County shall provide to DEQ a monitoring plan that describes or includes the following:
  - a. How Brunswick County will determine the previous day's average daily

streamflow at the Lawrenceville gage and at the intake.

- b. A streamflow and water withdrawal monitoring report table for use in recording and reporting compliance with the water withdrawal conditions of this permit;
- c. A plan for what measures Brunswick County will put in place to estimate streamflow at the intake in the event that the Meherrin River near Lawrenceville gage is damaged, disabled or discontinued.

**D. Required Notifications and Submittals**

1. All written communications required by this permit shall be submitted to the Department of Environmental Quality, Office of Water Permits, P. O. Box 10009 Richmond, Virginia 233240. Please include the permit number on all correspondence.
2. Properly labeled photographs include the following information: date and time of the photograph, name of the person taking the photograph, photograph orientation, permit number, and identifying name/description of the photograph.
3. The DEQ VWPP Program shall be notified in writing by certified mail at P.O. Box 10009, Richmond, Virginia 23240 at least ten days prior to the start of activities authorized under this permit so that inspections of the project can be planned, if deemed necessary. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work.
4. The DEQ VWPP Program shall be notified in writing by certified mail within 30 days following the completion of all activities in permitted impact areas authorized under this permit.
5. Brunswick County shall report any fish kills or spills of fuels or oils immediately upon discovery. If spills or fish kills occur between the hours of 8:15 AM to 5:00 PM Monday through Friday, the Piedmont Regional Office - DEQ shall be notified at (804) 527-5020; otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.
6. Brunswick County shall notify the board in writing when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by the board.
7. All compensatory mitigation monitoring reports shall be submitted by November 30<sup>th</sup> of the monitoring year, with the exception of the last year of monitoring, in which



case the report shall be submitted at least 60 days prior to expiration of the permit. The reports shall include, at a minimum, the following:

- a. An analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas set forth in the final mitigation plan;
  - b. An analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, set forth in the final mitigation plan;
  - c. Any wildlife species observed, both direct and indirect, using the mitigation area;
  - d. Any corrective measures or maintenance activities to control invasive species, repair any damaged water control device, or replace any damaged planted vegetation; and
  - e. Photographs taken from permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September every monitoring year. Photographs shall be appropriately labeled, following the procedures described in Section D, Number 2 of these permit conditions.
8. All reports required by this permit and other information requested by the board shall be signed by the applicant or a person acting in the applicant's behalf, with the authority to bind the applicant. A person is a duly authorized representative only if:
- a. The authorization is made in writing by a person described above; and
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
  - c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.
9. All submittals required by this permit shall contain the following signed certification statement:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who*

*manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.*

**E. Utility Line Crossings**

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless otherwise authorized by this permit.
2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (for example, backfilling with extensive gravel layers creating a french drain effect).

**F. Water Withdrawal Limits and Water Conservation Requirements**

1. The maximum daily water withdrawal shall not exceed 8.2 million gallons except when the average daily streamflow of the previous day at the intake site is less than 82 million gallons per day.
2. When average daily stream flow at the intake is less than 82.0 million gallons per day the maximum daily withdrawal for the next day shall not exceed 10% of the previous day's flow or 1.0 million gallons per day whichever is greater.
3. The maximum annual withdrawal from the Meherrin River shall not exceed 1.825 billion gallons.
4. Whenever the seven-day rolling average of streamflow at the Meherrin River near Lawrenceville gage is less than 50 cubic feet per second, Brunswick County shall issue a public request for voluntary conservation.
5. Whenever the seven-day rolling average of streamflow at the Meherrin River near Lawrenceville gage is less than 30 cubic feet per second the Brunswick County shall implement the mandatory conservation phase of the water conservation plan.
6. Within 180 days of permit issuance, Brunswick County shall develop for DEQ approval a water conservation plan, that details what measures will be taken to inform the general public that water conservation measures are in effect, what non-essential

uses of water are prohibited during mandatory conservation and what sanctions will be taken against those who violate the mandatory conservation provisions of the water conservation plan.

7. The maximum intake velocity shall not exceed 0.25 feet per second and the maximum width of the screen size opening shall not exceed 1.0 millimeter.

**G. Compensation On Site and Off Site**

Compensation Site Development

1. Brunswick County shall compensate for the 4.354 acres of permanent impacts to waters and wetlands associated with the reservoir and with the Brunswick Generating Station, and for the 0.072 acres of temporary wetland conversion impacts associated with the gas transmission line by the creation of not less than 8.852 acres of forested wetlands. Permanent and conversion impacts will be compensated at a ratio of 2:1. The compensation sites shall be preserved in perpetuity.
2. All work in permitted impact areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of any construction activity in permitted impact areas, unless otherwise authorized by the board.
3. Brunswick County shall provide appropriate and practicable compensatory mitigation for all impacts meeting the conditions outlined in this permit. The site or sites depicted in the conceptual compensatory mitigation plan submitted with the registration statement shall constitute the compensatory mitigation plan for the approved project.
4. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. The final compensatory mitigation plan as approved by the board shall be an enforceable requirement of this permit. Any deviations from the approved plan must be submitted and approved in advance by the board.
  - a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget for a typical year, a dry year and a wet year (including water budget methodology, and weather stations and years used), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of photographic stations and ground water monitoring wells. Rooted seedlings or cuttings shall originate from a local nursery or be adapted to local conditions. Vegetation shall be native species common to the area, shall be suitable for growth in local wetland

conditions, and shall be from areas within approximately 200 miles from the project site.

- b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual permit, modification of this permit, or waiver thereof, this restriction applies to ditching, land clearing or the filling, dumping, excavating, draining, flooding, or impounding. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.
5. Post-grading elevations for the compensation site shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensation plan.
6. A site stabilization plan shall be provided for compensation sites involving land disturbance at least 60 days prior to construction activities.
7. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan.
8. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.
9. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities, in accordance with the final compensation plan.
10. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season, 27 consecutive days, as defined in the United States

Department of Agriculture soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget of the final mitigation plan.

11. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or aerial cover.
12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.
13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to the board for approval prior to or with the next required monitoring report. All problems shall be corrected by Brunswick County. If significant changes are necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.
14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted within 30 days of the final monitoring event.
15. Herbicides or algacides shall not be used in or immediately adjacent to the compensatory mitigation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by the board in advance.

#### Compensation Site Monitoring

16. A post-grading survey, including spot elevations, of the site for wetland compensatory mitigation shall be required and shall be conducted by a licensed land surveyor or a professional engineer.
17. Photographs shall be taken at the compensatory mitigation site or sites from the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in

August or September every monitoring year. Photographs shall be appropriately labeled, following the procedures described in Section D, Number 2 of these permit conditions.

18. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year one) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, 5, and 7. If all success criteria have not been met in the seventh year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied (i.e., that corrective actions were successful).
19. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year (see Compensation Site Development, Item Number 9 above), monitoring may be discontinued for the remainder of that monitoring year.
20. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final mitigation plan.
21. The establishment of wetland vegetation shall be in accordance with the final mitigation plan. Monitoring shall take place in August or September during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.
22. The presence of noxious species shall be documented.
23. Compensation site monitoring reports shall follow the procedures described in Section D of these permit conditions. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

Part II – General Conditions

- A. Duty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.
- B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.
- C. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.
- D. VWP permit action.
  - 1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
  - 2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185.
  - 3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in A above, or for other reasons listed in 9 VAC 25-210-180.

- E. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:
1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
  2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.
- F. Duty to provide information.
1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
  2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.
- G. Monitoring and records requirements.
1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
  2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
  3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
  4. Records of monitoring information shall include:
    - a. The date, exact place and time of sampling or measurements;
    - b. The name of the individuals who performed the sampling or measurements;
    - c. The date and time the analyses were performed;
    - d. The name of the individuals who performed the analyses;
    - e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
    - f. The results of such analyses; and
    - g. Chain of custody documentation.



- H. Reopener. This permit may be reopened to modify conditions to meet new regulatory standards duly adopted by the board. Cause for reopening a permit includes, but is not limited to when the circumstances on which the permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit modification or revocation and re-issuance.
- I. Compliance with state and federal law. Compliance with this permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.
- J. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.
- K. Transferability. Except as provided for under automatic transfer, a permit shall be transferred only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee. A permit shall be automatically transferred to a new permittee if:
  - 1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
  - 2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
  - 3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.
- L. Civil and criminal liability. Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

- M. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for the permittee to dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland:
1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  2. Filling or dumping;
  3. Permanent flooding or impounding; or
  4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.
- N. Severability. The provisions of this permit authorization are severable.
- O. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care shall be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.